

Pages 1 - 14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VAUGHN R. WALKER

ROSEMARY D'AUGUSTA, et al.,)	
)	
Plaintiffs,)	
)	
VS.)	No. C 08-3007 VRW
)	
NORTHWEST AIRLINES and DELTA)	
AIRLINES,)	
)	San Francisco, California
Defendants.)	Wednesday
)	July 23, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:	ALIOTO LAW FIRM 555 California Street, 31st Floor San Francisco, California 94104
BY:	JOSEPH M. ALIOTO, ESQUIRE THERESA D. MOORE, ESQUIRE THOMAS P. PIER, ESQUIRE
For Defendant	O'MELVENY & MYERS LLP
Northwest Airlines:	275 Battery Street, 26th Floor San Francisco, California 94111-3305
BY:	MICHAEL TUBACH, ESQUIRE
	O'MELVENY & MYERS LLP 1625 Eye Street, NW Washington, D.C. 20006-4001
BY:	HENRY THUMAN, ESQUIRE

(Appearances continued on next page)

Reported By: *Katherine Powell Sullivan, CSR # 5812*
Official Reporter - U.S. District Court

Katherine Powell Sullivan, CSR, RPR, CRR
Official Reporter - U.S. District Court
(415) 794-6659

APPEARANCES (CONTINUED):

For Defendant

Delta Air Lines:

BOIES, SCHILLER & FLEXNER
1999 Harrison Street, Suite 900
Oakland, California 94612

BY: JOHN F. COVE, JR., ESQUIRE

BOIES, SCHILLER & FLEXNER
575 Lexington Avenue, 7th Floor
New York, New York 10022

BY: DONALD L. FLEXNER, ESQUIRE

KING & SPALDING
Four Embarcadero Center, Suite 3500
San Francisco, California 94111

BY: DONALD F. ZIMMER, JR., ESQUIRE

P R O C E E D I N G S

JULY 23, 2008

10:06 A.M.

THE CLERK: Calling civil case 08-3007, Rosemary D'Augusta, et al. versus Northwest Airlines and Delta Air Lines, Inc.

Counsel, can I get your appearances.

MR. ALIOTO: May it please Your Honor, Joseph M. Alioto for the plaintiffs.

MS. MOORE: Good morning, Your Honor. Theresa Moore, Alioto Law Firm, for the plaintiffs.

MR. PIER: Good morning, Your Honor. Tom Pier for the plaintiffs.

THE COURT: Good morning.

MR. FLEXNER: Good morning, Your Honor. Donald Flexner, Boies, Schiller & Flexner representing Delta Air Lines.

THE COURT: Good morning.

MR. FLEXNER: Good morning.

MR. COVE: Good morning, Your Honor. John Cove, Boies, Schiller & Flexner, for Delta Air Lines.

MR. ZIMMER: Good morning, Your Honor. Fritz Zimmer, King & Spalding, also for Delta Air Lines.

THE COURT: Good morning.

MR. THUMANN: Good morning, Your Honor. Henry

1 Thumann of O'Melveny & Myers, for Northwest.

2 **MR. TUBACH:** Good morning, Your Honor. Michael
3 Tubach, O'Melveny & Myers, also for Northwest.

4 **THE COURT:** Very well.

5 Counsel, first, let me commend you. It appears that
6 you've worked out a scheduling agreement. And that appears to
7 be a practical way to proceed with this case. And with some
8 minor adjustments, which I'd like to talk with you about, I
9 think we can proceed essentially on the schedule that you've
10 agreed to.

11 You've asked for a pretrial conference on the 7th of
12 November, and a trial date of November 10. And you intend to
13 conclude your expert discovery, let's see, on the 31st of
14 October.

15 I think we can probably have a pretrial conference
16 even before the expert discovery has concluded. I don't
17 imagine that there's anything associated with the expert
18 discovery that we will need to discuss at the pretrial
19 conference. And if there is something that comes up in the
20 course of that expert discovery, we can probably deal with that
21 shortly before trial.

22 So given the obligations that the Court has, let me
23 suggest two alternatives with respect to both the pretrial
24 conference date and the trial date.

25 One alternative would be to have the pretrial

1 conference on Wednesday October 22, with the trial to begin on
2 Monday, November 3. The other alternative would be a pretrial
3 conference on Monday, November 3, with trial beginning on
4 Wednesday, November 5.

5 Now, I know you all have various and sundry
6 schedules. This is pretty close to what you've asked for, but
7 I do need to make some adjustments in order to accommodate
8 the --

9 **MR. THUMANN:** As of those two, I think our concern
10 has been -- and this was the plaintiffs' proposed schedule.

11 **THE COURT:** Yes, Mr. Thumann.

12 **MR. THUMANN:** We were trying to balance two things,
13 Your Honor. Henry Thumann, Northwest Airlines.

14 On one hand, we have a lot that we have to get done
15 in order to have a full record, you know, for Your Honor, that
16 we can put on very expeditiously in ten trial dates. So we
17 were trying to be as compact as we possibly could.

18 **THE COURT:** I think you have been commendably
19 compact. And you're going to have a busy fall. There's no
20 doubt about it.

21 **MR. THUMANN:** We're going to have a very busy fall.
22 This is also subject to a Hart-Scott-Rodino review of the
23 Department of Justice. And we'll be engaged, in part, in
24 dealing with that as well.

25 So as between the two dates, the two schedules you

1 propose, we obviously choose starting on the 5th of November.
2 But if there were some way, you know, to give us a few more
3 days on that end, it would be appreciated.

4 We understand you have your own schedule, and we both
5 do our best to accommodate that. But I don't think it's in
6 anybody's interest to do -- you know, to do this before we're
7 fully prepared, and dates -- where we're in a position where
8 we're counting days here.

9 **THE COURT:** Here are some of my problems. First of
10 all, the 10th of November is the day before Veterans Day. I'm
11 not sure, when are we celebrating Veterans Day this year? Are
12 we celebrating it on the 11th?

13 **MR. FLEXNER:** On the 11th, Your Honor.

14 **THE COURT:** We are celebrating it on the 11th. So
15 we'd have an interruption right then and there.

16 Then during the week of the 16th, I am committed to a
17 Civil Rules Committee meeting during that week, which makes
18 this schedule difficult. And then the following week we run
19 into Thanksgiving.

20 **MR. THUMANN:** Yes. I appreciate that, Your Honor.
21 And we can only do what we can do. And we appreciate your
22 aggressively trying to make yourself available.

23 I would point out, you know, obviously, there's no
24 jury, and these days do not have to be consecutive. We could
25 have a break of a few days here and there to accommodate your

1 schedule.

2 **THE COURT:** I fully understand that. So we can
3 adjust the schedule and have a day here or there if needs be.

4 It doesn't seem to me, Mr. Thumann, that starting on
5 the 5th would be all that much more difficult than starting on
6 the 10th.

7 **MR. THUMANN:** Well, it was five days.

8 **THE COURT:** Just have to work a little harder this
9 fall.

10 **MR. THUMANN:** It is your card room, and we are going
11 to be here on your schedule, Your Honor.

12 **THE COURT:** Well, look, you have agreed to what I
13 think is an expedited schedule and an ambitious schedule. And
14 I appreciate the fact that you've worked out this agreement.
15 And I'm confident that there will be a lot of cooperation in
16 the preparation of the case for trial. And I don't want to put
17 a monkey wrench in things. By the same token, I suspect your
18 clients would like to have a determination as quickly as
19 possible.

20 **MR. THUMANN:** Absolutely, Your Honor. I mean, that's
21 the other part of this.

22 **THE COURT:** And the faster we move, then that might
23 spur action in the Department of Justice.

24 **MR. THUMANN:** It may indeed.

25 **THE COURT:** So ...

1 **MR. THUMANN:** Look, if it's going to be the 5th, if
2 that's what works, we'll be here on the 5th. If we could slide
3 that a day or even two days, we would appreciate it. But we
4 understand that we can only work with the possible.

5 **THE COURT:** Mr. Flexner, what's your position?

6 **MR. FLEXNER:** I concur in what Mr. Thumann has said.
7 But, Your Honor, if you have two days that you can spare, that
8 would give us a little more latitude as we prepare for trial,
9 that would be great. If you don't, we'll be ready on
10 November 5th.

11 **THE COURT:** Mr. Alioto?

12 **MR. ALIOTO:** We're agreeable to any date that's
13 agreeable to the Court. And if the Court agrees with the
14 defendants, that's also fine with us. We would be ready to
15 start November the 3rd. Whatever pleases Your Honor.

16 I note, however, that November 4th is Election Day.
17 My son's running for supervisor, so I've got to be sure I vote.
18 So I don't know what time court begins or what time we end, but
19 I've got to get out before --

20 **THE COURT:** Maybe you better get an absentee ballot.

21 **MR. ALIOTO:** I'll go get one.

22 We're agreeable to any of those dates, Your Honor.

23 **THE COURT:** Aliotos always have their eye on Election
24 Day, don't they?

25 All right. Let's pick, Counsel, Wednesday,

1 November 5, as the first day of trial. 8:30 a.m., Wednesday,
2 November 5.

3 Now, given that, shall we conduct a pretrial
4 conference on October 22nd? Or shall we push it all the way
5 back to November 3rd? Meaning that we're not going to have
6 whatever pretrial determinations are made until just a couple
7 of days before trial.

8 **MR. FLEXNER:** I think our side would prefer the 3rd,
9 Your Honor. I think it's a more efficient thing to do relative
10 to the start date of trial.

11 **THE COURT:** Mr. Alioto?

12 **MR. ALIOTO:** Either one, if it please Your Honor.

13 **THE COURT:** All right. Let's do it on the 3rd. In
14 my experience in cases of this kind, there aren't too many
15 things that are going to affect the trial that we will decide
16 at the pretrial conference. So I think we can schedule a
17 pretrial that late in the process.

18 Well, with those adjustments then, the balance of the
19 schedule that you propose in your joint pretrial case
20 management statement is fine with the Court. And I will adopt
21 that schedule.

22 **MR. FLEXNER:** Thank you, Your Honor.

23 **THE COURT:** Yes, Mr. Alioto.

24 **MR. ALIOTO:** I have one question, Your Honor.

25 **THE COURT:** Yes, sir.

1 **MR. ALIOTO:** Will the Court be going five days a
2 week? And will the Court be beginning at 8:30 until when?

3 **THE COURT:** We'll start at 8:30.

4 **MR. ALIOTO:** Okay.

5 **THE COURT:** And we will go Wednesday, November 5.
6 Let me ask the clerk if it will be possible for us to clear
7 either the 6th or the 13th law and motion matters, or put all
8 the law and motion matters that are previously scheduled on
9 those dates on one date so that we can go a full day on either
10 the 6th or the 13th.

11 How do those two law and motion dates look?

12 **THE CLERK:** We're clear for law and motion on those
13 two dates.

14 **THE COURT:** On those two dates?

15 **THE CLERK:** Yes, as of today.

16 **THE COURT:** We can hold them open. We can go all day
17 on the 6th, until about 4 o'clock. We'll go from 8:30 until
18 4:00. We'll take an hour for a midday break. We can go all
19 day on the 7th. We can go all day on the 10th. Veterans Day
20 is the 11th. We can go all day on the 12th, the 13th and the
21 14th.

22 And then let me take a look at the schedule for the
23 16th.

24 **MR. ALIOTO:** The 16th is a Sunday, Your Honor.

25 **THE COURT:** The week of the 17th. Let me see what my

1 commitment is during that period.

2 (The Court and clerk confer off the record.)

3 **THE COURT:** We can certainly schedule this for the
4 20th and 21st, as well. We'll have to have a break on 17, 18
5 and 19.

6 **MR. ALIOTO:** Very good, Your Honor.

7 **THE COURT:** And then if needs be, we can pick up a
8 day or two the following week, the 24th, so that we will have
9 all of this done before Thanksgiving.

10 **MR. ALIOTO:** Very good, Your Honor.

11 **THE COURT:** You've asked for ten days, and you'll get
12 ten days if you need it.

13 **MR. ALIOTO:** Thank you very much, Your Honor.

14 **THE COURT:** If you can do it in less than ten days,
15 it will be good for all of us.

16 (Counsel thank the court.)

17 **THE COURT:** All right. Anything else?

18 Mr. Thumann, you're up.

19 **MR. THUMANN:** The pretrial conference, is there a
20 time, Your Honor?

21 **THE COURT:** We can do it at 10 o'clock on Monday the
22 3rd.

23 **MR. THUMANN:** Thank you, Your Honor.

24 **THE COURT:** All right. That's our schedule.

25 Now, what else can we profitably talk about this

1 morning, to help you get going on this ambitious schedule?

2 Mr. Alioto?

3 **MR. ALIOTO:** I had the opportunity, Your Honor, to
4 try a case with Mr. Thumann in the '70s. And I'm quite sure
5 that we'll be able to work out any issues. We don't have any
6 issues at all, other than those that we've obviously presented
7 in the stipulation. So we don't anticipate any problems with
8 regard to discovery on either side.

9 We do not think, however, that our case is in any way
10 contingent upon what the Department of Justice may or may not
11 do.

12 **THE COURT:** Okay.

13 **MR. ALIOTO:** Thank you.

14 **THE COURT:** Mr. Flexner.

15 **MR. FLEXNER:** Your Honor, we are content with where
16 we are. We'll go forward, as Mr. Alioto suggests, in a
17 cooperative way. We want to get this thing done.

18 **THE COURT:** Mr. Thumann.

19 **MR. THUMANN:** Your Honor, having just pleaded for
20 some extra days, let me just say how important it is to
21 Northwest to get this determined as quickly as possible.

22 As the seller in a proposed merger transaction, we're
23 trying and have to have a challenge to hold the organization
24 together. So we really appreciate the alacrity of which Your
25 Honor has set the schedule and is prepared to go forward.

1 **THE COURT:** Well, I understand the importance of the
2 matter, and am looking forward to a very interesting trial.

3 As both Mr. Alioto and Mr. Tubach, and I believe Mr.
4 Zimmer know, if you run into any discovery issues in the course
5 of your preparation, don't hesitate to contact me either by
6 telephone or by a letter, and we'll try to resolve that
7 discovery issue informally, and without the necessity of motion
8 practice.

9 Any other problems that come up, and given the
10 accelerated schedule that you're pursuing here, there may be
11 some bumps along the road. But we'll try to smooth those out
12 as quickly as possible so that you can move on.

13 I suppose in a case like this I shouldn't be talking
14 about bumps in the road. Air pockets in the sky.

15 **MR. ALIOTO:** Air pockets is right.

16 **THE COURT:** Mr. Alioto, anything further?

17 **MR. ALIOTO:** I just forgot to mention, Your Honor,
18 that Daniel Shulman was unable to come today. But he obviously
19 is going to be an integral part in the prosecution of the case.

20 **THE COURT:** Very well.

21 **MR. ALIOTO:** Thank you.

22 **THE COURT:** Anything further on the defense side?

23 **MR. FLEXNER:** Nothing further, Your Honor.

24 **MR. THUMANN:** Nothing further, Your Honor.

25 **THE COURT:** Thank you very much, Counsel.

(Counsel thank the Court.)

(At 10:23 a.m. the proceedings were adjourned.)

- - - -

CERTIFICATE OF REPORTER

I, KATHERINE POWELL SULLIVAN, Official Reporter for
the United States Court, Northern District of California,
hereby certify that the foregoing proceedings in C 08-3007 VRW,
Rosemary D'Augusta, et al., vs. Northwest Airlines and Delta
Air Lines were reported by me, a certified shorthand reporter,
and were thereafter transcribed under my direction into
typewriting; that the foregoing is a full, complete and true
record of said proceedings at the time of filing.

s/b Katherine Powell Sullivan

Katherine Powell Sullivan, CSR #5812, RPR, CRR

Tuesday, October 7, 2008